

AMENDED IN ASSEMBLY JUNE 10, 2004

AMENDED IN ASSEMBLY JUNE 2, 2004

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE MAY 1, 2003

SENATE BILL

No. 1034

Introduced by Senator Murray
(Coauthors: Senators Romero and Speier)
(Coauthors: Assembly Members Longville and Reyes)

February 21, 2003

An act to add Title 10 (commencing with Section 2500) to Part 4 of Division 3 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Murray. ~~Contracts: recording companies~~
Recording contracts: royalties.

Existing law prescribes the rights of parties to contracts for various types of services.

This bill would authorize a royalty recipient under a contract for the production of sound recordings, notwithstanding any provision of the contract, to audit the books and records of a royalty reporting party, as defined, to determine if the royalty recipient has earned all of the royalties due pursuant to the contract. The bill would require the royalty recipient to retain a qualified royalty auditor to conduct the audit and would prescribe other requirements and limitations.

The bill would make related findings and declarations.

~~Existing law specifies the rights of parties regarding contracts relating to the production of records.~~

~~This bill would specify that, notwithstanding any provision in a recording artist contract, an artist, or his or her representative, has the right to hire any qualified auditor to audit a record company or its successor or assignee, as specified, to determine if the artist is receiving all of the royalties due to him or her pursuant to the contract. The bill would further permit an artist, notwithstanding any provision in a recording artist contract, or his or her representative, to enter into a contingency fee agreement with an auditor and to have an audit conducted jointly with another artist, as specified.~~

~~The bill would also require the record company to provide an auditor with all records that relate to the audit, as specified. The bill would contain provisions requiring a record company to pay for auditor fees, legal fees, interest on royalties, and treble damages in circumstances in which the audit shows more than a specified percentage of royalties were not paid by the record company to the artist. The bill would also establish procedures for binding arbitration of disputes regarding those audits and would enact other related provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Title 10 (commencing with Section 2500) is~~
- 2 ~~SECTION 1. The Legislature finds and declares:~~
- 3 ~~(a) The recording industry is an important industry to the State~~
- 4 ~~of California.~~
- 5 ~~(b) Artistic labor is an important resource to the people of~~
- 6 ~~California that is vital to maintaining a healthy and vibrant~~
- 7 ~~recording industry.~~
- 8 ~~(c) Every royalty artist should have the ability to conduct an~~
- 9 ~~audit to verify earnings reported under a recording contract.~~
- 10 ~~(d) The establishment of a set of basic auditing practices will~~
- 11 ~~advance the interests of both the artists and the recording industry~~
- 12 ~~as a whole.~~
- 13 ~~(e) This act is important public policy and establishes minimum~~
- 14 ~~audit procedures that apply to all royalty contracts in the recording~~
- 15 ~~industry.~~
- 16 ~~SEC. 2. Title 10 (commencing with Section 2500) is added to~~
- 17 ~~Part 4 of Division 3 of the Civil Code, to read:~~
- 18

TITLE 10. RECORDING ARTIST CONTRACTS

2500. As used in this title:

(a) "Royalty recipient" means a party to a contract for the furnishing of services in the production of sound recordings, as defined in Section 101 of Title 17 of the United States Code, who has the right to receive royalties under that contract.

(b) A "royalty reporting party" is the party obligated to pay royalties to the royalty recipient under the contract described in subdivision (a).

2501. Notwithstanding any provision of a contract described in Section 2500:

(a) A royalty recipient may audit the books and records of the royalty reporting party to determine if the royalty recipient earned all of the royalties due the royalty recipient pursuant to the contract, subject to the following:

(1) A royalty recipient may conduct an audit not more than once per year.

(2) A royalty recipient shall request an audit within three years after the end of a royalty earnings period under the contract.

(3) A royalty recipient may not audit a particular royalty earnings period more than once.

(b) The royalty recipient shall retain a qualified royalty auditor of the royalty recipient's choice to conduct an audit described in this section.

(c) The royalty recipient may enter into a contingency fee agreement with the auditor described in subdivision (b).

(d) A qualified royalty auditor may conduct individual audits of the books and records of a royalty reporting party on behalf of different royalty recipients simultaneously.

(e) Except as required by law, a qualified royalty auditor shall not disclose any confidential information obtained solely during an audit without the express consent of the party or parties to whom that information is confidential. This subdivision shall not prohibit the auditor from disclosing to the royalty recipient, or an agent of the recipient, on behalf of whom the auditor is conducting the audit information directly pertaining to that royalty recipient's contract, as described in Section 2500.

(f) The provisions of subdivisions (a), (b), (c), (d), and (e) are in addition to any other rights provided by a contract, as described

1 in Section 2500, between a royalty recipient and a royalty
2 reporting party.

3 (g) Nothing in subdivision (a), (b), (c), (d), or (e) shall be
4 deemed to extend any limitations period applicable to royalty
5 accounting or payments not specifically addressed in this section.

6 (h) Nothing in subdivision (a), (b), (c), (d), or (e) shall be
7 deemed to limit any rights provided by collective bargaining
8 agreement or by applicable state or federal law.

9 added to Part 4 of Division 3 of the Civil Code, to read:

10
11 TITLE 10. ~~RECORDING ARTIST CONTRACTS~~

12
13 2500. ~~This title shall be known and may be cited as the~~
14 ~~“Recording Industry Accounting Practices Act.”~~

15 2501. ~~(a) Notwithstanding any provision in a recording artist~~
16 ~~contract:~~

17 (1) ~~An artist, or a person or entity representing the artist, has the~~
18 ~~right to hire any qualified auditor to audit a record company with~~
19 ~~which the artist has or had a recording contract, or its successor or~~
20 ~~assignee, at least once a year within three years after a statement~~
21 ~~regarding royalties has been received by the artist, to determine if~~
22 ~~the artist is receiving all of the royalties due to him or her pursuant~~
23 ~~to the contract.~~

24 (2) ~~The artist or his or her representative may enter into a~~
25 ~~contingency fee agreement with an auditor to conduct an audit~~
26 ~~pursuant to paragraph (1).~~

27 (3) ~~One or more artists may have an audit conducted jointly,~~
28 ~~pursuant to paragraph (1).~~

29 (b) ~~The record company shall provide an auditor conducting an~~
30 ~~audit in accordance with subdivision (a) with all records that relate~~
31 ~~to the audit, including the manufacturing records, unaccounted for~~
32 ~~sales, nonroyalty units, and physical and perpetual inventory~~
33 ~~records.~~

34 (c) (1) ~~If the audit shows that more than 10 percent due to the~~
35 ~~artist in royalties was not paid by the record company, the record~~
36 ~~company shall pay the party permitted to conduct the audit its~~
37 ~~costs, including auditor fees, legal fees, and interest accrued on the~~
38 ~~royalties.~~

39 (2) ~~The record company shall pay treble damages for any~~
40 ~~amounts due that exceed the amount specified in paragraph (1).~~

1 ~~(3) If the audit shows that more than 20 percent due to the artist~~
2 ~~in royalties was not paid by the record company, the artist shall be~~
3 ~~entitled to rescind the contract.~~

4 ~~(d) If the record company and the artist or his or her~~
5 ~~representative disagree about the amount shown owing to the artist~~
6 ~~by the audit, the dispute shall be submitted to binding arbitration~~
7 ~~administered pursuant to the rules and procedures of the American~~
8 ~~Arbitration Association. The arbitrator shall award attorney's fees~~
9 ~~to the artist if the arbitrator determines that the record company~~
10 ~~owes the artist royalties.~~

11 ~~(e) The audit shall commence no later than 60 days from the~~
12 ~~receipt of the notice of examination. The record company shall~~
13 ~~respond within 45 days of receipt of the audit or examination~~
14 ~~claim.~~

15 ~~(f) The remedies provided by this section are in addition to any~~
16 ~~other remedies provided by other applicable federal or state laws.~~

